

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	: CRIMINAL
	: NO. 04cr697-01
vs.	:
	: CIVIL ACTION
MALCOLM LADSON	: NO. 13cv5737

MEMORANDUM

Defendant has filed a motion in support of Ground One under 28 U.S.C. § 2255(f)(3) in light of the U.S. Supreme Court decision in *Descamps v. United States*, 133 S.Ct. 2276 (Document No. 211) to which the government has filed a response and the defendant has filed a traverse.

Defendant was convicted by a jury and sentenced to a term of 240 months of incarceration on July 29, 2005. The conviction and sentence were affirmed on appeal on August 23, 2007.

On August 1, 2008 defendant filed his first motion for a writ of habeas corpus under 28 U.S.C. § 2255. I denied the petition on March 25, 2009 and the Third Circuit denied a certificate of appealability on September 28, 2009.

On December 21, 2009 defendant filed a pro se motion for relief under Rule 60(b)(3) indirectly challenging his conviction and sentence. I denied the motion on January 13, 2010 and the Third Circuit denied a certificate of appealability on April 28, 2010.

On April 4, 2010 defendant filed an application with the Third Circuit seeking leave to file a second or successive habeas corpus petition. The application was denied on January 8, 2010.

Ladson then filed a motion for writ of *audita querela* under 28 U.S.C. § 1651(a) on March 18, 2011 which he later supplemented by seeking a writ of habeas corpus under 28 U.S.C. § 2241. I dismissed both motions on October 19, 2011 and an application to the Third Circuit to file a second or successive motion under Section 2255 was denied on July 18, 2012.

On February 7, 2013 defendant filed yet another motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255 which I dismissed on February 11, 2013. An application to the Third Circuit to file a second or successive motion under Section 2255 was then denied on March 28, 2013.

Yet another application to file a second or successive motion was denied by the Third Circuit on September 12, 2013.

On October 1, 2013 Ladson filed another motion under Section 2255 which I denied on April 3, 2014. A motion for reconsideration was denied on April 23, 2014 and on November 6, 2014 the Third Circuit denied his application for a certificate of appealability.

The pending motion was filed on June 18, 2014, the government's response on November 26, 2014 and the defendant's traverse on January 20, 2015.

The instant motion is no different from the prior motions in that it requests relief under *Descamps* and its progeny. As the court has repeatedly advised the defendant, he may not file a second or successive motion for relief under 28 U.S.C. § 2255 without first obtaining authorization from the Court of Appeals. He has not done so; therefore, the instant motion must be dismissed as an unauthorized second or successive motion. This court lacks jurisdiction to consider the claims raised in the motion and it must be dismissed for lack of jurisdiction. *See United States v. Baptiste*, 223 F.3d 188 (3d Cir. 2000).

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O R D E R

AND NOW, this 25th day of March, 2015, upon consideration of Defendant's Motion in Support of Ground One under 28 U.S.C. § 2255(f)(3) in Light of the U.S. Supreme Court Decision in *Descamps v. United States*, (Document No. 211), and the government's response and the defendant's traverse, **IT IS HEREBY ORDERED** that:

1. The motion is **DISMISSED** for lack of jurisdiction.
2. The clerk of court **SHALL CLOSE THIS MATTER FOR STATISTICAL PURPOSES**.
3. A certificate of appealability will not issue because reasonable jurists would not debate the correctness of this court's ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

William H. Yohn Jr., Judge